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CHARLES ELMORE C

In the

Supreme Court of the United States

No. 168

LEON FRIEDMAN,
Petitioner,
vs.
THE UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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To the Honorable Chief Justice of the Supreme Court of the United States:

To the Honorable Associate Justices of the Supreme Court of the United States:

Now comes Leon Friedman and petitions this Honorable Court to issue a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit to review the judgment of that Court entered June 1st, 1951 affirming the conviction and sentence of the petitioner.

Title 28, U. S. C. A., Section 1254.
Supreme Court Rule 38, 28 U. S. C. A.
Rule 37-B of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A.

STATEMENT OF THE CASE

The indictment filed in this case on September 29th, 1950, states as follows:

> "The Grand Jury charges that on or about May 27th, 1950, in the Eastern District of Michigan, Southern Division, Leon Friedman, did wilfully, feloniously, fraudulently and knowingly demand of Frances Shatanoff a sum of money, to-wit: Fourteen Dollars, under threat of informing the *Collector of Internal Revenue* that she had violated the *Internal Revenue Law* in that she had filed a false return, in violation of Section 873, Title 18, U. S. C. A." (R. 1). (Italics supplied.)

The defendant was tried before the Court, having waived a jury, was found guilty and judgment passed December 8th, 1950 (R. 6).

An appeal was taken to the United States Court of Appeals for the Sixth Circuit and on June 1st, 1951 said Appellate Court rendered its judgment as follows:

> "This case came on to be heard upon the records and briefs and oral argument of counsel.
>
> And it appearing that the indictment, although loosely drawn and not to be commended, contains the elements of the offense intended to be charged and fairly apprises the appellant of the charges against him. *Hagner v. U. S.*, 285 U. S. 427, 431, 433;
>
> And it appearing that jury trial was waived and the case was tried to the Court, and that sufficient evidence was presented to support the finding of the

Court that the letter addressed by the appellant to the prosecuting witness constituted a violation of Section 873, Title 18, U. S. C. A.;

It is ordered that the judgment be, and it hereby is, affirmed" (R. 11).

JURISDICTION

This Court has jurisdiction to issue the Writ of Certiorari under Title 28, U. S. C. A. Section 1254. Supreme Court Rule 38, 28 U. S. C. A., and Rule 37-B of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A.

QUESTIONS PRESENTED

1. Does the indictment charge an offense within the purview of Section 873, Title 18, U. S. C. A.?

2. Does the indictment violate the petitioner's constitutional privilege as provided in the Due Process clause of the Fifth Amendment?

3. Does the indictment violate the petitioner's constitutional privilege as provided in the Sixth Amendment, (to be informed of the nature and cause of the accusation)?

REASONS RELIED UPON FOR GRANTING THE WRIT OF CERTIORARI

1. The indictment does not charge an offense within the purview of Section 873, Title 18, U. S. C. A.

One of the essential elements of the offense charged in Section 873, Title 18, U. S. C. A., is the threat of informing or as a consideration for not informing against any violation of *any law of the United States.*

The indictment here refers only to the Collector of Internal Revenue and the violation of the Internal Revenue Law. The Collector of Internal Revenue is not necessarily

an official of the United States of America, and the Internal Revenue Law does not necessarily refer to the United States Revenue Code and/or the United States Revenue Act. The indictment fails to set forth one of the essential elements of the crime, that is, of informing of a violation of any United States Law.

The indictment violates the petitioner's constitutional privilege as provided in the Fifth Amendment (Due Process Clause) and the Sixth Amendment, (to be informed of the nature and cause of the accusation) to the Constitution of the United States.

The allegations in the indictment are not sufficiently definite to fairly apprise the respondent of what he must be prepared to meet in order to give him a fair opportunity to prepare his defense so that the judgment may be a bar to further proceedings against him for the same offense.

As previously stated, the Collector of Internal Revenue could be the Collector of Internal Revenue for any State, and the Internal Revenue Law could be the Internal Revenue Law of any State in the Union, and a threat of informing against a violation of a State law does not come within the purview of Section 873, Title 18, U. S. C. A. The indictment further charges, that she had filed a false return. No specific return is referred to and if it is to be assumed that it is an income tax return, (many returns are required under the United States Internal Revenue Code) then the year the alleged false return was filed would be an essential element of the offense so that any judgment may be a bar to further proceedings against him for the same offense.

Respectfully submitted,

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BRIEF IN SUPPORT OF PETITION

JURISDICTION

The jurisdiction of this Court to entertain this petition and to grant the Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit is contained in Title 28, Section 1254, U. S. C. A.; Supreme Court Rule 38, 28 U. S. C. A., and Rule 37-B of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A.

APPELLATE COURT'S OPINION

The opinion of the Appellate Court (R. 11) states:

> "* * * It appearing that the indictment, although loosely drawn and not to be commended, contains the elements of the offense intended to be charged and fairly apprises the appellant of the charges against him."

Citing *Hagner v. U. S.*, 285 U. S. 427, 431, 433.

ARGUMENT

Rule 7-C of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A., following Section 687, provides in part:

> "The indictment or information shall be a plain, concise and definite written statement of the essential elements constituting the offense charged * * *."

In *Hagner v. U. S., supra,* cited by the Appellate Court in its opinion, provides in part as follows:

> "The indictment in the particular complained of is loosely and inartificially drawn and it not to be commended, but upon the record before us, and without deciding that the indictment would not have been open to some form of challenge at an earlier stage of the case, we are of the opinion that after verdict it is not vulnerable to the attack here made upon it * * *."

Rule 12-B(2) of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A., provides in part as follows:

> "* * * Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the Court at any time during the pendency of the proceeding."

The challenge here made by the petitioner is that the indictment does not charge an offense within the purview of Section 873, Title 18, U. S. C. A.

The true test of the sufficiency of an indictment is not whether it could have been more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction. *U. S. v. Hagner, supra; Cochran and Sayre v. U. S.*, 157 U. S. 286, 290; *Rosen v. U. S.*, 161 U. S. 29, 34.

Respectfully submitted,

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